

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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sub class of physically
unable?*

MARGARET BROWN, SHARON MANNING,)
and EMMA WADE, individually,)
and on behalf of all others)
similarly situated,)
Plaintiffs,)

vs.)

Civil Action No. _____

METROPOLITAN DEVELOPMENT AND)
HOUSING AGENCY, and)
GERALD NICELY, in his capacity)
as Executive Director of the)
Metropolitan Development and)
Housing Agency,)
Defendants.)

*charges may
be assessed more
than once a
month!*

COMPLAINT-CLASS ACTION

I. PRELIMINARY STATEMENT

Plaintiffs in this case, tenants of public housing in Nashville, seek an end to charges assessed against them by Defendant Metropolitan Development and Housing Agency (hereinafter "M.D.H.A.") for cleaning common areas of housing project grounds. Moreover, M.D.H.A. assesses these charges regardless of whether tenants are at fault in failing to keep the area clean. In assessing these charges, M.D.H.A. violates the United States Housing Act, 42 U.S.C. § 1437 et seq., regulations

found at 24 C.F.R. § 966.4, and the lease agreement with tenants. Plaintiffs seek declaratory and injunctive relief mandating an end to defendants' policy and practice in assessment of these charges.

II. JURISDICTION

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1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1337. The declaratory relief sought by plaintiffs is authorized by 28 U.S.C. §§ 2201 and 2202. Plaintiffs request the Court to assume jurisdiction over their pendent state law claims.

by Rule 57465
of FRCP and by
42 USC § 1983

III. PARTIES

2. Plaintiff Margaret Brown is an adult citizen of the United States and a resident of Davidson County, Tennessee.

3. Plaintiff Sharon Manning is an adult citizen of the United States and a resident of Davidson County, Tennessee.

4. Plaintiff Emma Wade is an adult citizen of the United States and a resident of Davidson County, Tennessee.

5. Defendant M.D.H.A. is a body politic and corporate of the State of Tennessee, with the power to sue and be sued pursuant to T.C.A. § 13-804(25). It is a public housing agency as defined at 42 U.S.C. § 1437a(6). Its offices are located at 701 South Sixth Street, Nashville, Tennessee.

6. Defendant Gerald Nicely, who is sued in his official capacity, is the Executive Director of the defendant M.D.H.A. In such capacity he is responsible for all actions, policies, and

Should you highlight proceed:?

practices of defendant M.D.H.A.

IV. CLASS ACTION ALLEGATIONS

7. Plaintiffs bring this action on their own behalf, and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. They represent the class of present and future residents of non-high-rise public housing operated by M.D.H.A.

8. The requirements of Rule 23 are met for ^{the} each class in that:

(a) The class is so numerous that joinder is impracticable. On information and belief, M.D.H.A. has over four thousand tenants in its non-high-rise public housing projects. Present class members are dispersed throughout Nashville, Tennessee. Future members may presently be located throughout the United States.

(b) The common issue of fact is the defendants' policy and practice of charging a tenant for removal of any paper or other items from the yard area adjacent to the building in which he/she lives, regardless of whether the yard is exclusively for the tenant's use, whether other complexes of similar design and construction in Nashville require their

tenants to clean the yard areas, or whether the tenant is at fault in failing to keep the area clean. The common question of law is the validity of that policy and practice.

charge for failure to maintain.

(c) The claims of the representative parties are typical of the claims of the class. Plaintiffs challenge a policy and practice that is generally applied to tenants living in non-high-rise public housing apartments. Their interest in having these illegal charges ended is not antagonistic to the interests of other class members.

(d) The representative parties will fairly and adequately protect the interests of the class. They are represented by a Legal Services program which has previously successfully litigated the rights of public housing tenants in federal and state courts.

(e) The defendants have acted and intend to act on grounds generally applicable to the class. The form lease signed by all tenants provides that a tenant can be charged for not keeping his/her yard clean (§ 14A). This provision is interpreted by management as imposing strict liability on tenants for whatever is found in the yard area adjacent to their apartment buildings when the yard crew

cleans the project grounds. Moreover, defendant Nicely admits that "if trash is collected from a shared area each of the tenants sharing the area receives a charge."

V. STATUTORY, REGULATORY, AND POLICY BACKGROUND

9. The United States Housing Act of 1937, 42 U.S.C. § 1437 et seq., (hereinafter "the Act") was passed to provide safe, decent, affordable housing for low-income Americans. 42 U.S.C. § 1437. Accordingly, the Act authorized H.U.D. to subsidize the ~~bond authority of~~ public housing agencies (hereinafter "PHAs"). 42 U.S.C. § 1437c. Subsequently, to further insure the affordability of the housing for low-income persons, rents were limited to a percentage of family income. 42 U.S.C. § 1437a. So that PHAs could still meet operating expenses, the Act was also amended to provide operating subsidies for the PHAs. 42 U.S.C. § 1437g.

10. In return for these subsidies, PHAs are required to develop and operate their low-income housing projects in accordance with certain statutory mandates. In addition, the PHAs are to comply with such procedures and requirements as the Secretary of H.U.D. may prescribe. 42 U.S.C. § 1437d(c)(4).

11. To carry out these statutory provisions, H.U.D. executes Annual Contributions Contracts with PHAs. In the Contract, a PHA formally binds itself to operate in compliance with H.U.D.'s requirements and regulations. H.U.D. requirements in addition to published regulations are contained in handbooks

that it issues.

12. Under the Act and H.U.D. regulations, the charges that a public housing agency can assess to its tenants are restricted. Rent, which encompasses the use of the dwelling accommodation and equipment, services, and reasonable amounts of utilities, is limited to a certain percentage of income, 42 U.S.C. § 1437a; 24 C.F.R. §§ 960.403(a) and 960.404. In addition to rent, a tenant must pay for any damage caused by the tenant's household, and for consumption of excess utilities. 24 C.F.R. § 966.4(b)(2). Tenants also may be assessed penalties for late payments and security deposits. 24 C.F.R. § 966.4(b)(3).

13. Damage charges:

may include charges for the tenant's failure to carry out maintenance and housekeeping tasks in accordance with the terms of the lease, such as failure to maintain a lawn area that is an appurtenance to the dwelling. . . . PHAs may not, however, perform such tasks on the tenant's behalf and assess a charge for the service on a routine and recurring basis. The tenant must be given the opportunity to carry out his or her obligations under the lease without incurring additional charges. If the tasks are such that they cannot reasonably be performed by the tenants, such as dealing with severe insect infestation in high-density housing the task should be assumed by the PHA as part of its maintenance obligations without additional charge to the tenant.

H.U.D. Public Housing Occupancy Handbook # 7465.1 REV ¶ 3-5(a).

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14. *H.U.D. regulations specify required and allowed lease provisions*
Require maintenance tasks to be performed by tenants under the lease *upon which the above-stated damage charges may be based* include upkeep of "the premises and such other areas as may be assigned to him for his exclusive use." 24 C.F.R. § 966.4(f)(6). However, tenants can be required to

perform maintenance tasks only:

where performance of such tasks by tenants of dwelling units of a similar design and construction is customary: Provided, that such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHAs; and provided further, That the PHA shall exempt those tenants who are unable to perform such tasks because of age or a physical disability."

24 C.F.R. § 966.4(g).

15. The standard lease between M.D.H.A. and its tenants provides: "[the tenant] must keep [his/her] apartment and yard clean, neat and safe. [He/she] must get rid of trash in the proper way. [He/she] must use plastic bags for [his/her] trash. [He/she] can buy these at the office. M.D.H.A. can charge [him/her] if [he/she] does not do this." (Lease ¶ 14(A)). This lease provision is the basis for the standard \$4.50 charge commonly called trash charges or paper charges, assessed by M.D.H.A. for picking up paper or any other item from the yard area.

16. In M.D.H.A.'s projects, there are apartments which open onto wholly common space and apartments which open onto yard area without clearly defined boundaries, which is essentially common space. All such yard areas are subject to heavy pedestrian traffic not only from the particular apartment building, but from the project as a whole and the surrounding public ways. Under M.D.H.A. policy, a tenant is held strictly liable for any paper or other items removed from this yard area near his dwelling. Whenever the project maintenance crew, in the course of cleaning up the project grounds, which is M.D.H.A.'s

responsibility under paragraph 13(E) of the lease, removes paper or other items from the yard area in the vicinity of the dwellings, the charge is assessed, regardless of whether there was any direct connection between the item and the tenant, how much time is spent picking the item(s) up, or whether the tenant had recently cleaned the area.

VI. FACTUAL ALLEGATIONS

17. Plaintiff Margaret Brown resides with her two minor children at 117-A University Court, Nashville, a "row"-type dwelling. In this type of dwelling a number of apartments ^djoin each other in a row. Ms. Brown's front door opens onto a stoop shared with the apartment next door. From the stoop a short walkway leads to a walkway running along the length of the row of approximately ten adjoining apartments. The rear of the apartment has an individual stoop and a walkway running parallel to the building. Another row of apartments is parallel to Ms. Brown's row not very far away, in both the front and the back. At one end of Ms. Brown's row building is University Court, a street that runs through the project, Tony Sudekum Homes. A dumpster is also located here. The other end of the apartment row abuts on an open space at the end of another row of apartments. Pictures are attached as Exhibits A and B to this Complaint to aid in visualization. Paper often blows from the dumpster at the building end abutting University Court. The whole area is heavily traveled by people, who walk across the

yard areas, as well as use the sidewalks. People also use the entire stoop at Ms. Brown's apartment entryway as a place to sit and to congregate. Often the people are the guests of her neighbor in Apartment 117, but sometimes they are neither the neighbors' guests nor her own.

18. Ms. Brown cleans the yard area in the front and the back of her apartment daily in the mornings before she and her children leave for work and day care. Despite these efforts, she has received a number of trash charges over the last year. Pursuant to M.D.H.A.'s grievance procedure, she grieved a charge received in July of 1984. Under the procedure, a tenant first presents a grievance to his/her manager to attempt an informal settlement. If no settlement is possible, the tenant may request a hearing. The hearing is held before a panel of two tenants, two managers, and a fifth person who is neither a tenant nor a manager. The decision of the panel is the final decision of M.D.H.A. on the grievance. The August 17, 1984 decision of the M.D.H.A. grievance panel stated:

Position of M.D.H.A. [as propounded by tenant's project manager]: Trash was found and picked up on tenant's area. All tenants must be treated the same in regards to the interpretation of M.D.H.A. lease.

Position of Grievant: Tenant says she cleans her yard everyday before going to work, and takes her children to work with her. She does not feel that she should pay for trash on her yard that she was not guilty of putting there.

Decision of Panel: Charges are valid and the tenant must pay.

Reasons for decision and recommendation: Mrs. Brown's lease clearly states that tenant is responsible for her own yard. And further states that if M.D.H.A. maintenance has to pick up trash in anyone's area, they will be charged a \$4.50 charge.

Vote of Panel: For five charges to be paid by tenant.

Against Zero.

Ms. Brown paid the charge under protest. She also paid her most recent charge which was posted May 20, 1985, under protest.

19. Plaintiff Sharon Manning lives with her adult brother at 18-B University Court, Nashville, a "wholly common-space" type of apartment. The front of her apartment and the one next to it, number 18-A, open onto a porch on the second story of the building in which they live. A stairway from the porch leads to the ground and a walkway parallel the building in which they live. Underneath apartments 18-A and B is apartment 18. There is a patch of ground between the foot of the stairway and the porch of apartment 18. Pictures of the front of Ms. Manning's apartment are attached as Exhibits C and D to this Complaint.

20. As with the "row" apartments, Ms. Manning's "unit" adjoins numerous other units in a row. It faces, front and rear, other rows of two-tiered units. One end of the row abuts the street. The apartments are centrally located in the project, and the area is heavily traveled. On information and belief, there are approximately 450 families living in Tony Sudekum Homes.

21. On information and belief, ^{if}_A the project maintenance crew finds any trash in the general area around the stairs,

everyone in the three apartment unit has to pay the \$4.50 charge. Ms. Manning receives Supplemental Security Income (S.S.I.) due to a spinal cord problem and eye trouble. It is a strain on her back to pick up the papers. She feels pain afterwards. She nevertheless tries to keep the yard area picked up, but with only limited success. She has received numerous trash charges since she moved in in September of 1984. Since the beginning of April, 1985 she has received three for the front yard area and one for the rear. She complained about the charges to her manager, and his response was that it was in her lease.

22. The total income for Ms. Manning's household is Three hundred twenty-five dollars (\$325.00) and her rent is Eighty-five dollars (\$85.00). Ms. Manning does not have a kitchen table, and would like to put money aside for that. However, the trash charges eat up the little extra that is not needed for other necessary living expenses.

23. Plaintiff Emma Wade also lives on the second story, of the unit at 78 University Court, with her four minor children. The design of her building is essentially the same as that of Sharon Manning's. Ms. Wade cleans the yard area around the unit in the mornings except for those when she has to be at work by 7:00 o'clock. Ms. Wade lives in a busy area, and, despite her efforts, she has received a number of trash charges over the last year.

20. On information and belief, for each project, the project maintenance crew cleans the project grounds every

morning. As the crew cleans the general project grounds, they also pick up any paper or other trash in the yard area adjacent to the apartment buildings. The foreman "spots" the area first, and writes the charges. Thus, for the row dwellings, when charges are assessed, frequently everyone, or virtually everyone in the line of apartments gets a charge for ~~for~~ any paper removed. There is no relation between the charge and the amount of time spent removing the paper. The charge may be assessed for removing even a single item. There is no prior notice given to tenants of any problem with the cleanliness of an area that needs to be corrected.

> 21. On information and belief, it is not customary in Nashville for tenants of dwelling units / of a similar design and construction to those of the plaintiffs herein, to be required to clean the yard areas adjacent to their dwellings. Landlords of similar apartment complexes, including those receiving federal > subsid~~ies~~ies for their mortgages and/or their tenants, ^{do not charge tenants} for removal of paper from the yard area adjacent to the buildings. They > consider this yard clean^up to be part of the general maintenance and a management function.

VII. FIRST CAUSE OF ACTION

22. By putting in their form lease a provision which requires tenants who do not have individual yard areas to keep clean the yard areas around the buildings in which they live, which are subject to heavy pedestrian traffic, and to be subject

Violates ¹⁷ Brooke Amendment

> to assessment for failure to do so on a twenty¹four hour basis,
violates the United States Housing Act of 1937, 42 U.S.C. §
> 1437d(e)(1), which prohibits unreasonable lease provisions.

> 23. 42 U.S.C. § 1983^{also} provides a cause of action for this
violation of plaintiffs' rights.

IX. SECOND CAUSE OF ACTION

*plead this
in 1983
42 USC § 1487?*

24. The defendants' policy and practice of assessing charges to tenants for removal of paper or other items from wholly common areas or yard areas that are not clearly delineated and over which the tenants have no effective control, without any indication that a tenant's household is responsible for the deposit of the material there, violates HUD regulations, specifically 24 C.F.R. § 966.4(f)(6), which provides that a tenant may be required to keep clean only the yard area that is for his/her exclusive use.

25. 42 U.S.C. § 1983 ~~also provides a cause of action for this violation of plaintiffs' rights.~~

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highlight*

26. The violation of this regulation is also a violation of the Annual Contributions Contract between M.D.H.A. and the United States Department of Housing and Urban Development which requires that M.D.H.A. comply with all regulations issued by the government. Plaintiffs are third-party beneficiaries of this Contract.

X. THIRD CAUSE OF ACTION

> 27. ~~Even~~^I if any of plaintiffs are considered to have an

exclusive yard area, defendants' assessment of trash charges for alleged failure to clean the yard, when other complexes of similar design and construction do not require their tenants to perform this type of maintenance, violates HUD regulation 24 C.F.R. § 966.4(g), which provides that tenants may be required under the lease to perform maintenance tasks only when performance of such tasks by tenants of dwelling units of similar design and construction is customary.

is this customary

28. 42 U.S.C. § 1983 also provides a cause of action for this violation of plaintiffs' rights.

29. A violation of this regulation is also a violation of the Annual Contributions Contract between M.D.H.A. and the United States Department of Housing and Urban Development which requires that M.D.H.A. comply with all regulations issued by the government. Plaintiffs are third-party beneficiaries of this Contract.

VIII. FOURTH CAUSE OF ACTION

30. By assessing trash charges regardless of fault either in the deposit of the trash or the tenant's efforts in assisting to keep the yard area clean, the defendants have enacted arbitrary and unreasonable policy and thereby violated the plaintiffs' substantive due process rights under the Fourteenth Amendment to the United States Constitution.

31. 42 U.S.C. § 1983 also provides a cause of action for this violation of plaintiffs' rights.

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XI. FIFTH CAUSE OF ACTION

32. By requiring their tenants to clean essentially common space defendants have breached their lease agreement with plaintiffs under which M.D.H.A. contracted in ¶ 13(E), to maintain project grounds.

XII. SIXTH CAUSE OF ACTION

> 33. Under the above⁻quoted lease provision, paragraph 14(A) of the lease, tenants are required to make reasonable efforts to keep their yard area clean. Defendants have violated this provision by assessing charges to their tenants for removing trash from the yard areas near their dwellings regardless of their efforts in keeping the areas clean.

XIV. PRAYERS FOR RELIEF

Plaintiffs respectfully pray on their own behalf and on behalf of all others similarly situated that this Court:

1. Assume jurisdiction of this cause and set this case down promptly for hearing.
2. Determine by Order, pursuant to Rule 23(c)(1), Federal Rules of Civil Procedure, that this action be maintained as a class action on behalf of the classes defined herein.

3. Enter final judgment pursuant to 28 U.S.C. § 2201 and § 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring as follows:

> A. That defendants' policy and practice of assessing charges to their tenants for removal of paper or other items from yard space around the buildings in which they live, violates 42 U.S.C. § 1437d(e)(1); 42 U.S.C. § 1983; 24 C.F.R. §§ 966.4(b), (f)(6), and (g); ~~the Fourteenth Amendment to the United States Constitution;~~ the defendants' Annual Contributions Contract with HUD, of which the tenants are third party beneficiaries; and the lease agreement between M.D.H.A. and its tenants. /

4. Enter a permanent injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, prohibiting the defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from assessing plaintiffs charges for the removal of paper from the yard area in the vicinity of their dwellings without specific indication of their responsibility in its deposit there.

5. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and 42 U.S.C. § 1988, as amended, allow plaintiffs their costs herein and reasonable attorneys' fees.

6. Allow plaintiffs and all persons similarly situated such additional or alternative relief as may seem to this Court to be just, proper and equitable.

Respectfully submitted,

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